

BIOGRAPHY and COURT PRACTICE

JUDGE THOMAS M. HARDIMAN

The Honorable THOMAS M. HARDIMAN was born on July 8, 1965 and was raised in Waltham, Massachusetts by his parents, Robert and Judith Hardiman. He received a B.A. with honors from the University of Notre Dame in 1987 and a J.D. with honors from Georgetown University Law Center in 1990. During law school he served as a Notes & Comments Editor of the Georgetown Law Journal. Following graduation, Judge Hardiman joined the Washington, D.C. office of Skadden, Arps, Slate, Meagher & Flom, as an associate in the litigation group. In 1992 he moved to Pittsburgh and joined the firm of Cindrich & Titus, later known as Titus & McConomy LLP, as an associate. In 1996, he was elected partner at the age of 30. In 1999, Judge Hardiman joined Reed Smith LLP as a partner in the litigation department until he took the bench on November 1, 2003.

Prior to assuming judicial duties, Judge Hardiman was a member of the bars of Massachusetts, the District of Columbia, Pennsylvania, the U.S. Supreme Court, the U.S. Court of Appeals for the Third Circuit, and the U.S. Tax Court. He also was a member of the Allegheny County Bar Association, and the Pennsylvania Bar Association, where he served on the Professionalism Committee from 1999 - 2003. In 1995, Judge Hardiman was appointed to serve as a Hearing Officer for the Disciplinary Board of the Supreme Court of Pennsylvania. Upon conclusion of his term in 1999, he then served as an Alternate Hearing Member until 2003. From 1996 until 1998, Judge Hardiman served as a member of the House of Delegates of the American Bar Association. Presently, Judge Hardiman serves as a Master for the American Inns of Court, Pittsburgh Chapter and as a Fellow of the Academy of Trial Lawyers of Allegheny County.

In addition to his professional activities, Judge Hardiman has been actively involved with Big Brothers Big Sisters of Greater Pittsburgh, Inc. He has been a Director since 1995, served as President from 1999 - 2000, and presently chairs the Board Excellence Committee. In 2002 he received the agency's Nancy B. Zappala Service Award, which is presented annually to the person who has made the greatest contribution to the agency.

Judge Hardiman and his wife Lori have three children.

**PRACTICES AND PROCEDURES OF
JUDGE THOMAS M. HARDIMAN
(Effective 04/02/04)**

I. GENERAL MATTERS

A. Communications with the Court

The Court has a preference for communications to be in the form of motions so that they can be docketed.

B. Communications with Law Clerks

Communications with law clerks concerning the administration, not the merits of a case, are permissible. Acceptable inquiries include those pertaining to the status of any pending matter.

C. Telephone Conferences

Requests for attorneys and parties to participate in conferences by telephone will be considered on a case by case basis, unless otherwise ordered by the Court. However, settlement conferences and the initial status conference will not be conducted over the phone. (For settlement conferences, **chief trial counsel with full settlement authority** is expected to appear in person.) *See* Settlement Conferences *infra*.

When a telephone conference is permitted, counsel shall initiate the conference and contact the Court only after all parties are on the line.

D. Pro Hac Vice Admissions

Pro Hac Vice admissions should be sought by written motion.

E. Comments to the Media

Counsel are expected to adhere to the Rules of Professional Conduct in all dealings, including their dealings with the media as they relate to a pending matter.

II. MOTIONS PRACTICE

A. Oral Argument

In civil cases, Judge Hardiman generally does not hold oral argument unless there is a backlog of motions that must be addressed. In such limited circumstances, Judge Hardiman will schedule oral argument, generally on the third Friday of the month at 9:30 a.m. At oral argument, Judge Hardiman

informs the parties that he has read their briefs and states his tentative ruling based on the briefs and his review of the law. He then permits the party against whom his tentative ruling is made an opportunity to challenge that ruling. If necessary, the other party will be given the opportunity to respond. After completion of oral argument, Judge Hardiman will usually rule from the bench.

B. Briefs

Briefs in support of a motion shall be filed at the same time as the motion with respect to all motions except discovery motions, motions for extensions of time, and motions for continuance, for which no briefs are required. There is a page restriction of twenty (20) pages regarding all moving and responsive briefs filed with the Court unless leave of Court is sought and granted. Reply and sur-reply briefs are not to be filed without leave of Court and will be limited to five (5) pages if leave is granted.

C. Chamber Copies of Motion Papers

Counsel are requested to send courtesy copies of all dispositive motions and briefs to chambers. Voluminous appendices and/or exhibits should be omitted as they are available from the Clerk of Court's file.

D. Responses to Motions - Scheduling

Parties are given twenty (20) days to file a response to a dispositive motion and five (5) days to respond to a non-dispositive motion, unless otherwise ordered by the Court.

E. Magistrate Judge's Report and Recommendation

The Court will not rule on an objection to a Report or Recommendation of a Special Master or Magistrate Judge until a response is filed by the non-objecting party (or opposite party if both object). Briefs not in excess of ten (10) pages are encouraged. If no objections have been filed, the Court will rule solely on the basis of the R & R and the briefs already filed. Objections to, and appeals from, a Magistrate Judge's order on a discretionary issue pertaining to a discovery dispute are discouraged.

F. Evidentiary Hearings

Hearings necessitated by pretrial motions (e.g., suppression of confession or other evidence) will be held on the day of trial unless otherwise ordered by the Court.

G. Motions *In Limine*

Deadlines for filing motions *in limine*, with their supporting briefs, will be set forth in the pretrial order. Unless there is a good reason not to do so, motions *in limine* will be ruled upon in advance of trial and usually at the pretrial conference. (*See Side Bars, infra.*)

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

The Court utilizes a standard form case management order based on L.R. 16.1. Each case is designated as Track I or Track II. Other than the requirements of L.R. 16.1, no additional items are included in the order. Copies of the standard form case management and pretrial orders are attached hereto as Exhibits A and B.

2. Initial Status Conference

An initial status conference is scheduled within 30 (thirty) days of the filing of a responsive pleading, if not sooner. Chief trial counsel are required to attend and shall obtain full settlement authority prior to the conference. All parties shall be available by telephone.

At the initial status conference, the L.R. 16 Order (Case Management Order) is issued after discussion with lead trial counsel as to the length of time necessary for discovery, handling of expert witnesses and other matters. Settlement and ADR options also will be discussed in depth. In addition, the Court may ask the parties to agree to submit the case to final and binding arbitration or trial before a United States Magistrate Judge. **Accordingly, counsel shall speak with their clients about both of these issues prior to attending the conference and be prepared to respond.**

Additional case management conferences take place on request of counsel and in all cases prior to the trial date to discuss settlement and/or trial. Chief trial counsel are encouraged to request the assistance of the Court on any matter, as conferences to handle routine problems can be conducted by telephone. (*See Telephone Conferences supra.*)

3. **Settlement Conferences**

The Court entertains settlement conferences on a regular basis. At least three working days prior to the conference, each party should submit a brief letter to the Court detailing the relative strengths and weaknesses of its case, as well as its settlement posture. The letters will not be filed nor shared with opposing counsel. Accordingly, candor is expected.

Chief trial counsel and the client with full settlement authority shall attend all settlement conferences, in person. In cases in which there is insurance coverage (or the possibility of insurance coverage), a representative(s) from the carrier(s) shall attend the settlement conference. **The carrier representative(s) must have full settlement authority** on behalf of the carrier(s) to the full extent of the insurance policy(ies).

As at the initial status conference, counsel shall be prepared to discuss, ADR possibilities, in detail, at any settlement conference. The Court may ask the parties to agree to submit the case to final and binding arbitration or trial before a United States Magistrate Judge.

Accordingly, chief trial counsel shall speak with their clients about both of these issues prior to attending the conference and be prepared to respond. A mini-trial may be conducted when the parties genuinely believe it will assist settlement.

Finally, at all settlement conferences chief trial counsel shall be prepared to discuss any dispositive motions as well as counsel's prediction regarding the amount of time necessary to try the case.

4. **Extensions and Continuances**

The Court is not inclined to grant extensions for the filing of motions or briefs. Any request for an extension must take the form of a written motion (accompanied by a proposed order), and the motion must include a statement regarding opposing counsel's position on an extension.

Specific restrictions will be placed on further extensions when the case is not moving.

Extension for dates regarding appearances before the Court will be granted infrequently.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Generally ninety (90) days is permitted for discovery unless the parties indicate that a different time frame is needed and the Court approves that time frame. Extensions of time for discovery are permitted for cause shown, provided that the case has been advanced by counsel during the initial period of discovery.

2. Expert Witnesses

Discovery depositions of expert witnesses are nearly always permitted after completion of fact discovery. Expert witness discovery is reciprocal.

3. Deposition Disputes

If a discovery dispute arises during a deposition, the attorneys together may contact the Court to determine whether the Court wishes to resolve the matter at that time.

4. Stay of Discovery

The filing of a dispositive motion does not automatically stay discovery. A stay may be sought by motion, but will only be granted if the right to relief under the dispositive motion is clear or there is some other good reason. In some cases, discovery may be limited to those facts in support or opposition to the dispositive motion (e.g., a motion to dismiss on grounds of lack of *in personam* jurisdiction).

5. Limitations on Discovery

No standard form restrictions on the number of interrogatories or length of depositions are imposed beyond those set forth in the Federal Rules of Civil Procedure. The parties are however, expected to employ common sense and discretion in discovery matters. The Court will entertain a motion to limit discovery when a request propounded is unreasonable.

6. Rule 11 & Rule 37 Motions/Sanctions

The Court expects counsel to avoid the filing of Rule 11 and/or Rule 37 Motions through the exercise of good professional judgment, common

courtesy and civility. Counsel fees and costs will however, be awarded in appropriate circumstances.

C. Injunctions and Temporary Restraining Orders

Ex parte contact with the Court should be avoided. Therefore, in seeking an injunction and/or temporary restraining order, the moving party must establish that serious efforts were made to contact the opposing party or its counsel prior to seeking relief, supported by a F.R.Civ.P.65(b) Affidavit regarding the same. Otherwise, the Court will not hold a hearing on the matter or issue a temporary restraining order.

The moving papers in support of a motion for a temporary restraining order or preliminary injunction should include affidavit(s) in support of the motion with all relevant agreements and other documents attached to the affidavit(s). Any response to a motion for temporary restraining order or preliminary injunction must be accompanied by affidavits(s).

All requests for injunctions and temporary restraining orders are handled as expeditiously as possible and the Court will, in its discretion, and after review of the pleadings and affidavit(s), determine whether or not to conduct a hearing and scope of the testimony to be allowed.

D. Patent Cases

All patent cases before the Court shall follow the Northern District of California's Local Rules of Practice for Patent Cases. These Local Rules can be found at <http://www.cand.uscourts.gov>.

E. Trial Procedures

1. Scheduling of Cases

At or before the pretrial conference, a date for trial will be set. There generally is one or more backup case set for the same date. Vacation schedules, family conflicts and personal conflicts are accommodated where possible, but counsel must notify the Court of any such conflict as soon as possible.

2. Pretrial Conference

At the pretrial conference, witness lists, exhibits, motions in limine, jury instructions, voir dire, verdict slips and any other pretrial matters will be

discussed, in detail, and generally ruled upon. As such, counsel should be prepared to make all arguments thereon.

In addition, at the pretrial conference, the Court will inform the parties of the number of hours each party will be allotted to present testimony and evidence at trial.

3. **Trial Hours/Days**

For jury trials, Court is in trial session Monday through Friday, 9:00 a.m. to 4:00 p.m. with fifteen (15) minute breaks at 10:30 a.m. and 2:30 p.m. and a lunch break from 12:00 p.m. to 1:00 p.m. For non-jury trials, Court is in trial session Monday through Friday, 8:30 a.m. to 4:30 p.m. with a lunch break from 12:00 p.m. to 1:00 p.m. and additional breaks where appropriate.

4. **Trial Briefs**

Trial briefs are optional, but appreciated. There are no filing date restrictions, but the briefs are much more useful and more likely to be given serious consideration if filed at least ten (10) days before trial. Trial briefs should not exceed fifteen (15) pages.

In bench trials, counsel are required to submit proposed findings of fact and conclusions of law. (*See Proposed Findings of Fact and Conclusion of Law infra.*)

5. **Voir Dire**

The Courtroom Deputy generally conducts voir dire in civil cases.

Unless otherwise ordered by the pretrial order, counsel are permitted to supplement the standard questions. Counsel shall attempt to obtain consent of opposing counsel prior to submission of any such supplemental voir dire. Those supplemental voir dire questions to which counsel have agreed upon shall state “Consented To By Counsel”.

6. **Note Taking by Jurors**

Jurors are permitted to take notes and are provided with notebook paper to do so.

7. **Side Bars**

The Court believes counsel should be considerate of the use of jurors' time. Consequently, side bars are highly disfavored because they waste the jury's time and unduly extend the length of the trial. Counsel will meet with the Court each day thirty (30) minutes before the scheduled start of trial (or earlier if necessary to ensure that trial commences on time) to raise points of evidence or other issues that would otherwise necessitate a side bar conference. Failure to raise the issue at that time will generally result in a disposition of the in-Court objection in the presence of the jury.

8. **Examination of Witnesses Out of Sequence**

Where appropriate, witnesses may be examined out of sequence upon request of a party. Witnesses may be examined in any order to which counsel agree. For example, counsel could agree that expert witnesses for each side will testify back to back.

9. **Opening and Closing Statements**

Up to thirty (30) minutes is allotted to each side for opening and closing statements, depending on the complexity of the case.

10. **Time Limits for Examination of Witnesses**

Though Judge Hardiman does not impose strict time limits at trial, counsel are expected to aid the court in running all trials efficiently. At the pretrial conference, the Court will give general guidance as to time for examination of witnesses and admission of evidence during trial. This guidance includes each party's time spent on both direct and cross examinations.

11. **Examination of Witnesses or Argument by More Than One Attorney**

Co-counsel are not permitted to split up the examination of a witness.

12. **Examination of Witnesses Beyond Direct and Cross**

Re-direct and re-cross examination is not permitted without leave of Court.

13. **Videotaped Testimony**

The Court has no special procedures regarding videotaped testimony except those set out in the local rules.

14. **Reading of Material into the Record**

Counsel can devise their own methodology for reading material into the record, provided opposing counsel agrees.

15. **Exhibits**

All exhibits must be exchanged and marked in advance of trial. Copies are to be provided for the Court in binders properly labeled (“Plaintiff’s Exhibits” and “Defendant’s Exhibits”) at least three (3) days in advance of trial, unless otherwise ordered by the Court. In addition, counsel shall be prepared to compile and agree to a single exhibit binder (“Joint Exhibit Binder”) containing the most significant exhibits that will be submitted to the jury at the close of trial. In some cases, counsel shall plan to submit twelve (12) copies of the Joint Exhibit Binder (eight (8) for the jury and four (4) for the Court).

Voluminous data shall be presented by summary exhibits pursuant to Fed.R.Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). Where copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

Counsel are not to take time during trial to exchange exhibits with each other as this will have been accomplished pretrial. With advance notice and approval of the Court, visual aids and exhibits may be used during opening statements. Exhibits need not be offered into evidence in numeric order.

16. **Directed Verdict Motions**

The Court’s only requirements for directed verdict motions are those set forth in the Federal Rules of Civil Procedure.

17. **Jury Instructions**

The parties shall meet in an attempt to agree on a joint set of proposed jury instructions. After said meeting, the parties shall file a unified (meaning one) combined set of proposed instructions, along with computer disk/CD containing the instructions in **WordPerfect format**. The filed set of instructions shall include both the agreed upon instructions and the proposed instructions to which the parties have not agreed. Each agreed upon instruction shall include the following notation at the bottom of the page: “This proposed instruction is agreed upon by the parties.” Each instruction to which the parties have not agreed shall indicate at the bottom of the page the name of the party proffering the instruction. Proposed instructions by different parties shall be grouped together.

A charging conference will be held, at which time a ruling will be made on each point for charge and a copy of the Court’s proposed charge will be supplied to counsel. Counsel are required to state objections to the proposed charge at the charging conference and to supply the alternate language, together with case authority.

The Court will not accept separate proposed jury instructions from the parties.

18. **Proposed Findings of Fact and Conclusions of Law (Non-jury trial only)**

Plaintiff shall file and serve a courtesy copy, on computer disk/CD formatted in **WordPerfect format**, of consecutively numbered proposed findings of fact and conclusions of law. Plaintiff’s proposed findings of fact shall address each contested issue of fact remaining. Each proposed finding of fact shall be supported by clear and explicit reference to the parts of the record relied upon to support it. Each proposed conclusion of law shall be supported by citation to appropriate authority. With the proposed findings of fact and conclusions of law, Plaintiff also shall file and serve a brief in support of judgment integrating the proposed findings of fact with the proposed conclusions of law and demonstrating why the relief requested should be granted. The supporting brief shall not exceed ten (10) pages.

Defendant shall file and serve a courtesy copy, on computer disk/CD formatted in WordPerfect format, of consecutively numbered counter findings of fact and consecutively numbered counter conclusions of law, corresponding to the same numbered findings of fact and conclusions of law proposed by Plaintiff. Each proposed counter finding shall be supported by clear and explicit reference to the parts of the record relied upon to support it. Each proposed counter conclusion shall be supported by citation to appropriate authority. With the proposed counter findings and counter conclusions, Defendant also shall file and serve a brief in support of judgment integrating the counter proposed findings of fact with the counter proposed conclusions of law and demonstrating why the relief requested by defendant should be granted. The supporting brief shall not exceed ten (10) pages.

19. **Offers of Proof**

There should be no requests for offers of proof during trial as the parties will have discussed the witnesses at the 8:30 a.m. conference with the Court.

20. **General Courtroom Rules**

Counsel can conduct the trial in any manner they see fit, provided they do so with courtesy, civility and consistent with the Rules of Professional Conduct.

F. Jury Deliberations

1. **Written Jury Instructions**

The jury will be provided with a copy of the jury instructions.

2. **Exhibits in the Jury Room**

Generally, the jury will be given all admitted exhibits for use in deliberations.

3. **Jury Requests to Read Back Testimony or Replay Tapes During Deliberations**

Requests to read back testimony or replay tapes during deliberations generally will be denied.

4. **Jury Questions**

All written questions submitted by the jury are supplied to counsel. Counsel and the Court will meet to discuss and hopefully agree on a reply. In most cases, the jury will then be summoned to the courtroom where a verbal reply will be read. A written reply is also provided where appropriate.

5. **Availability of Counsel During Jury Deliberations**

Trial counsel need not remain in the courtroom area during jury deliberations, but must be available by telephone so that they can promptly return to the courthouse upon being contacted by the Court.

6. **Interviewing the Jury**

Interviewing of jurors post-verdict is discouraged, but jurors are told that they may submit to interviews if they wish.

IV. **CRIMINAL CASES**

A. **Motions**

Motions for extension of time to file pretrial motions are generally granted, especially if there is a significant amount of discovery material, on the case involves a wiretap or a complex factual situation. Appropriate language excluding delays from the operation of the Speedy Trial Act should be included in the proposed order accompanying the motion.

B. **Pretrial Conferences**

A status conference well in advance of trial is scheduled in each case.

C. **Guilty Pleas**

There are no special rules regarding guilty pleas and no deadlines for accepting or rejecting plea bargains. Counsel are encouraged to plea bargain as early as possible to avoid tying up trial time. The Court follows a written colloquy for entry of the plea. Counsel may have a copy of the colloquy on request.

D. **Voir Dire**

The Courtroom Deputy conducts the voir dire in criminal cases. Counsel may supplement any standard voir dire with questions they propose.

Unless otherwise scheduled in the pretrial order, proposed voir dire questions are to be submitted to the Court at least one (1) week prior to trial. Any supplemental voir dire questions approved by the Court will be asked by the Courtroom Deputy.

E. **Trial**

Counsel may decide when or if they will present an opening statement. Defense counsel may not open both before and after the prosecution.

Sidebars are disfavored and will not be permitted for the purpose of deciding an issue that could have been decided before trial that day.

Unless otherwise scheduled in the pretrial order, motions *in limine* are to be filed, together with supporting briefs, at least two (2) weeks in advance of trial.

Transcripts of tape recorded conversations are permissible.

The government is encouraged to turn over Jencks Act material as early as possible, and generally no later than the date jury selection begins.

All Brady/Kyles material within the possession or control of the government or its agents should be disclosed well in advance of trial, and the government is under a continuous obligation to disclose such material to the defense.

Special interrogatories to the jury will be submitted upon request of counsel in appropriate cases.

A copy of the jury instructions will be provided to the jury.

Unless otherwise ordered, counsel are required to submit proposed jury instructions at least two (2) weeks prior to trial, along with a computer disk/CD containing the instructions in WordPerfect format. A charging conference will be held, at which time a ruling will be made on each point for charge and a copy of the court's proposed charge will be supplied to counsel. Counsel are required to state objections to the proposed charge at the charging conference and to supply the alternate language, together with case authority.

F. Objections to Pre-sentence Investigation Report

Objections to the pre-sentence investigation report must be submitted by counsel well in advance of the sentencing hearing if counsel expect to receive tentative findings and conclusions from the Court. Counsel should refer to the Local Rules of Criminal Procedure for guidance.

Tentative Findings and Conclusions Concerning Disputed Facts or Factors will be provided to counsel in advance of the sentencing hearing.

The parties will be notified in advance and provided with reasons in cases when a downward or an upward departure is contemplated.

V. **BANKRUPTCY APPEALS (TO THE DISTRICT COURT)**

A. **Filing and Scheduling**

Briefs are to be filed within thirty (30) days by the appellant and thirty (30) days thereafter by the appellee.

B. **Oral Argument**

Oral argument is not generally scheduled, but may be granted upon request.

C. **Other General Practices/Procedures**

Briefing schedules and other deadlines imposed by the Federal Rules of Bankruptcy Procedure will be modified where appropriate on the request of the party.

EXHIBIT A
(SAMPLE TRACK I CASE MANAGEMENT ORDER)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT ORDER (TRACK I)

AND NOW, this ____ day of October, 2003, **IT IS ORDERED** that this action is placed under Local Rule 16.1 of this Court for pretrial proceedings and all provisions of the Rule will be strictly enforced. This action is designated a **Track I** case under Local Rule 16.1.3.

IT IS FURTHER ORDERED that counsel shall confer with their clients prior to all case management, status, or pretrial conferences to obtain authority to participate in settlement negotiations to be conducted by the Court. Counsel are encouraged to instruct the principals to be available by telephone to facilitate the amicable resolution of all litigation.

IT IS FURTHER ORDERED that compliance with provisions of Rule 16.1 shall be completed as follows:

- (1) The parties shall move to amend the pleadings or add new parties by _____ *(30 days before the end of discovery)*
- (2) The parties shall complete discovery by _____.

(60 days after the filing of the Answer) All interrogatories, depositions, requests of admissions, and requests for production shall be served within sufficient time to allow responses to be completed prior to the close of discovery.

(3) **EXPERT REPORTS AND DISCOVERY: (If applicable)**

(a) Plaintiff's expert reports shall be filed by _____. *(10 days after the close of discovery.)*

(b) Defendant's expert reports shall be filed by _____. *(20 days after the close of discovery.)*

©) All expert depositions shall be completed by _____. *(30 days after the close of discovery.)*

(4) Responses to motions to compel are due within 10 calendar days of the filing of the motion.

(5) Motions for summary judgment with evidentiary material and accompanying briefs, if appropriate, shall be filed by _____. *(60 days after the end of discovery.)* **Responses to motions shall be filed within 20 days of filing of such motion.** Briefs supporting or opposing summary judgment motions shall not exceed 15 pages, excluding tables of authorities. Reply and surreply briefs shall not be filed unless approved/requested by the Court.

- (6) Plaintiff's pretrial narrative statement shall comply with Rule 16.1.4.A, and be filed by _____ . (*45 days after the completion of filing of summary judgment briefs.*)
- (7) Defendant's pretrial narrative statement shall comply with Rule 16.1.4.B, and be filed by _____ . (*65 days after the completion of filing of summary judgment briefs.*)
- (8) Material facts not identified in the pretrial narrative statements may be excluded upon objection or *sua sponte*. Witnesses or exhibits not identified in the pretrial narrative statements shall not be admissible at trial, except for an exhibit to be used solely for impeachment purposes. Plaintiff should use numbers with a "P" prefix to designate exhibits (e.g., P1, P2, . . .); Defendant should use numbers with a "D" prefix to designate exhibits (e.g., D1, D2, . . .).
- (9) The parties shall not amend or supplement their pretrial narrative statements without leave of Court.
- (10) All parties shall file an indication whether or not they are willing to proceed to trial in front of a Magistrate Judge by _____ .
(30 days after the close of discovery.)

Thomas M. Hardiman
United States District Judge

EXHIBIT B
(SAMPLE PRETRIAL ORDER, JURY TRIAL)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PRETRIAL ORDER

AND NOW, this _____ day of _____, 2003, the Court **HEREBY**
ORDERS as follows:

A. Final Pretrial Orders:

1. **Jury Selection & Trial.** Jury selection and trial are set for _____ at
_____, Courtroom 5, 6th Floor, United States Post Office & Courthouse, Seventh Avenue and
Grant Street, Pittsburgh, Pennsylvania.

2. **Exchange of Witness Lists and Exhibits.**

- a. Plaintiff shall serve and submit to the Court its list of trial witnesses, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment). For each witness listed Plaintiff shall provide an offer of proof explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Plaintiff's witness list and offers of proof shall be due by _____. (*1 month before trial*)
- b. Defendant shall serve and submit to the Court its list of trial witnesses, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment). For each witness listed Defendant shall provide an offer of proof explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Defendant's witness list and offers of proof shall be due by _____. (*3 weeks before trial*)
- c. All exhibits must be exchanged and marked in advance of trial. Copies are to be provided for the Court in binders properly labeled ("Plaintiff's Exhibits" and "Defendant's Exhibits") at least two (2) days in advance of trial, unless otherwise ordered by the Court. In addition, counsel shall be prepared to compile and agree to a single exhibit binder ("Joint Exhibit Binder") containing the most significant exhibits that will be submitted to the jury at the close of trial. Counsel shall plan to submit twelve (12) copies of the Joint Exhibit Binder (eight (8) for the jury and four (4) for the Court).

Each Joint Exhibit Binder shall contain twenty (20) lined sheets of lined notebook paper provided for the jury to take notes.

- d. Voluminous data shall be presented by summary exhibits pursuant to Fed.R.Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). Where copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

3. **Designation of Discovery Excerpts to be Offered at Trial.** The parties shall submit designation of excerpts from depositions, interrogatory answers, and responses to requests for admission to be offered at trial (other than for impeachment) by _____. (*2 weeks before trial*)

4. **Motions.** The parties shall file all motions in limine, including motions under Fed.R.Evid. 104(a) and motions to limit or sever issues, together with supporting briefs or memoranda of law, by _____. (*2 weeks before trial*) Responses shall be filed by _____. (*10 days before trial*) All briefs supporting or opposing such motions are limited to 5 pages.

5. **Proposed Jury Instructions & Verdict Slips.** Counsel shall meet in an attempt to agree on a joint set of proposed jury instructions. After said meeting, and on or before _____, counsel shall file a unified (meaning one) combined set of proposed instructions, along with computer

disk/CD containing the instructions in WordPerfect format. The filed set of instructions shall include both the agreed upon instructions and the proposed instructions to which the parties have not agreed. Each agreed upon instruction shall include the following notation at the bottom: "This proposed instruction is agreed upon by the parties." Each instruction to which the parties have not agreed shall indicate at the bottom the name of the party proffering the instruction. Proposed instructions by different parties shall be grouped together.

A charging conference will be held, at which time a ruling will be made on each point for charge and a copy of the Court's proposed charge will be supplied to counsel. Counsel are required to state objections to the proposed charge at the charging conference and to supply the alternate language, together with case authority.

The Court will not accept separate proposed jury instructions from the parties.

6. **Proposed Voir Dire.** Counsel are permitted to supplement the standard questions provided that the proposed supplemental voir dire questions are submitted to the Court in writing by _____. (*10 days before trial*) Any supplemental voir dire questions approved by the Court will be asked by the Courtroom Deputy.

7. **Joint Stipulations.** The parties shall file joint stipulations by _____. (*10 days before trial*) All possible stipulations shall be made as to:

a. Facts;

- b. Issues to be decided;
- c. The authenticity and admissibility of exhibits;
- d. Expert qualifications and reports;
- e. Deposition testimony to be read into the record; and
- f. A brief statement of the claims and defenses to be read to the jury to introduce the trial.

Counsel shall meet at a mutually convenient time and place to produce the joint stipulation in time for filing as ordered.

8. **Final Pretrial Conference.** A final pretrial conference shall be held on _____ at _____, (*1 week before trial*) Room 916, 9th Floor, United States Post Office and Courthouse, Seventh Avenue and Grant Street, Pittsburgh, Pennsylvania.

9. **Courtesy Copies.** Courtesy copies of all items required to be filed and served pursuant to this order shall be delivered to chambers forthwith.

B. Trial Procedure

1. **Hours.** Court is in trial session, unless otherwise ordered by the Court, Monday through Thursday, 9:00 a.m. to 4:00 p.m. with breaks where appropriate. **All counsel are expected to be in their seats and ready to commence at the appointed times.**

2. **Exhibits.** Because counsel will have previously marked and exchanged all exhibits and provided a copy to the Court, it will not be necessary during the trial to show exhibits to opposing counsel prior to using them.

3. **Approaching the Witness.** It will not be necessary for counsel to request permission to approach a witness.

4. **Opening and Closing Statements.** Up to thirty (30) minutes is permitted to each side for opening and closing statements, depending on the complexity of the case. Counsel may use exhibits or charts in opening argument provided that the same have been provided to opposing counsel beforehand and either agreement was reached or the Court has ruled upon the matter.

5. **Side Bar Conferences.** The Court believes that counsel should be considerate of the jurors' time. Consequently, side bar conferences are highly disfavored because they waste the jury's time and unduly extend the length of the trial. Counsel will meet with the Court at 8:30 a.m. each day (or earlier if necessary to ensure that trial commences on time) each day to raise points of evidence or other issues that would otherwise necessitate a side bar conference. Failure to raise the issue at that time will generally result in a disposition of the in-court objection in the presence of the jury. If

necessary, counsel and the Court may amplify their objections and rulings on the record after the jury has been excused for a break, for lunch or for the day.

In addition, it is expected that counsel will anticipate evidentiary issues requiring lengthy argument and will take up such matters out of the presence of the jury. The Court will be available at **8:30 a.m.** each morning to address such issues. It is the responsibility of counsel to notify other counsel of the need for a conference at 8:30 a.m. and all other counsel will be expected to be there at the appointed time for argument. **THE COURT WILL NOT DELAY THE PROCEEDINGS TO RESPOND TO LAST MINUTE REQUESTS FOR CONFERENCES TO DISCUSS MATTERS WHICH, IN THE EXERCISE OF REASONABLE DILIGENCE, COULD HAVE BEEN HEARD AT THE MORNING CONFERENCE.**

6. **Witness List.** Prior to the commencement of the trial, counsel shall provide opposing counsel with a complete witness list, and shall provide opposing counsel throughout the trial with the actual list of the next day's witness by 5:00 p.m. in the order they are expected to be called. The same procedure will be employed by both sides at the end of each trial day. Counsel should be sure that they have adequate witnesses to fill the time allotted each day.

7. **Note Taking.** The jury shall be permitted to take notes.

8. **Jury Questions.** All written questions submitted by the jury are supplied to counsel. Counsel and the Court will meet to discuss and hopefully agree on a reply. The jury is then summoned to the Courtroom in most cases and the verbal reply is given to them. A written reply is provided where appropriate.

9. **Jury Instructions.** A copy of the jury instructions shall be provided to the jury for use during its deliberations.

10. **Jury Access to Exhibits.** Unless otherwise advised by counsel, it will be assumed that all admitted exhibits will be sent out with the jury.

Thomas M. Hardiman
United States District Judge

cc: All counsel of record as listed below

EXHIBIT C
(SAMPLE PRETRIAL ORDER, NON-JURY TRIAL)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PRETRIAL ORDER (NON-JURY TRIAL)

AND NOW, this _____ day of _____, 2003, the Court **HEREBY**

ORDERS as follows:

A. Final Pretrial Orders:

1. **Trial.** Trial of the above captioned matter is set for _____ at _____, Courtroom 5, 6th Floor, United States Post Office & Courthouse, Seventh Avenue and Grant Street, Pittsburgh, Pennsylvania.
2. **Exchange of Witness Lists and Exhibits.**
 - a. Plaintiff shall serve and submit to the Court its list of trial witnesses, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment). For each witness listed Plaintiff shall provide an offer of proof explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Plaintiff's witness list and offers of proof shall be due by _____. (*1 month before trial*)

- b. Defendant shall serve and submit to the Court its list of trial witnesses, listing separately the witnesses it will call and the witnesses it may call if needed (other than purely for impeachment). For each witness listed Defendant shall provide an offer of proof explaining the substance of the witness' testimony. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Defendant's witness list and offers of proof shall be due by _____. (*3 weeks before trial*)
- c. All exhibits must be exchanged and marked in advance of trial. Copies are to be provided for the Court in binders properly labeled ("Plaintiff's Exhibits" and "Defendant's Exhibits") at least (2) days in advance of trial, unless otherwise ordered by the Court.
- d. Voluminous data shall be presented by summary exhibits pursuant to Fed.R.Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). Where copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.
3. **Designation of Discovery Excerpts to be Offered at Trial.** The parties shall submit designation of excerpts from depositions, interrogatory answers, and responses to requests for admission to be offered at trial (other than for impeachment) by _____. (*2 weeks before trial*)

4. **Motions.** The parties shall file all motions in limine, including motions under Fed.R.Evid. 104(a) and motions to limit or sever issues, together with supporting briefs or memoranda of law, by _____. (*2 weeks before trial*) Responses to motions in limine shall be filed by _____. (*10 days before trial*) All briefs supporting or opposing such motions are limited to 5 pages.

5. **Proposed Findings of Fact and Conclusions of Law.**

- a. On or before _____, Plaintiff shall file and serve a courtesy copy, on computer disk/CD formatted in WordPerfect format, of consecutively numbered proposed findings of fact and conclusions of law. Plaintiff's proposed findings of fact shall address each contested issue of fact remaining. Each proposed finding of fact shall be supported by clear and explicit reference to the parts of the record relied upon to support it. Each proposed conclusion of law shall be supported by citation to appropriate authority. With the proposed findings of fact and conclusions of law, Plaintiff also shall file and serve a brief in support of judgment integrating the proposed findings of fact with the proposed conclusions of law and demonstrating why the relief requested should be granted. The supporting brief shall not exceed _____ pages.
- b. On or before _____, Defendant shall file and serve a courtesy copy, on computer disk/CD formatted in WordPerfect format, of consecutively numbered counter-findings of fact and consecutively numbered counter-conclusions of law, corresponding to the same numbered findings of fact and conclusions of law proposed by Plaintiff. Each

proposed counter finding shall be supported by clear and explicit reference to the parts of the record relied upon to support it. Each proposed counter-conclusion shall be supported by citation to appropriate authority. With the proposed counter-findings and counter-conclusions Defendant also shall file and serve a brief in support of judgment integrating the counter-proposed findings of fact with the counter-proposed conclusions of law and demonstrating why the relief requested by defendant should be granted. The supporting brief shall not exceed _____ pages.

- c. Counsel shall specify in the proposed findings or proposed counter-findings all facts to be proved at trial. Proof of facts not specified may be excluded upon objection or by the Court *sua sponte*.

6. **Joint Stipulations**. In addition to the above proposed findings of fact and conclusions of law, the parties shall file connectively numbered joint stipulations by _____. (**10 days before trial**) All possible stipulations shall be made as to:

- a. Facts;
- b. Issues to be decided;
- c. The authenticity and admissibility of exhibits;
- d. Expert qualifications and reports; and
- e. Deposition testimony to be read into the record.

Counsel shall meet at a mutually convenient time and place to produce the joint stipulation in time for filing as ordered.

7. **Final Pretrial Conference.** A final pretrial conference shall be held on _____ at _____, (*1 week before trial*) Room 916, 9th Floor, United States Post Office and Courthouse, Seventh Avenue and Grant Street, Pittsburgh, Pennsylvania.

8. **Courtesy Copies.** Courtesy copies of all items required to be filed and served pursuant to this order shall be delivered to chambers on a computer disk/CD formatted in WordPerfect format.

Thomas M. Hardiman
United States District Judge